

Digitising European Culture

– legal stasis?

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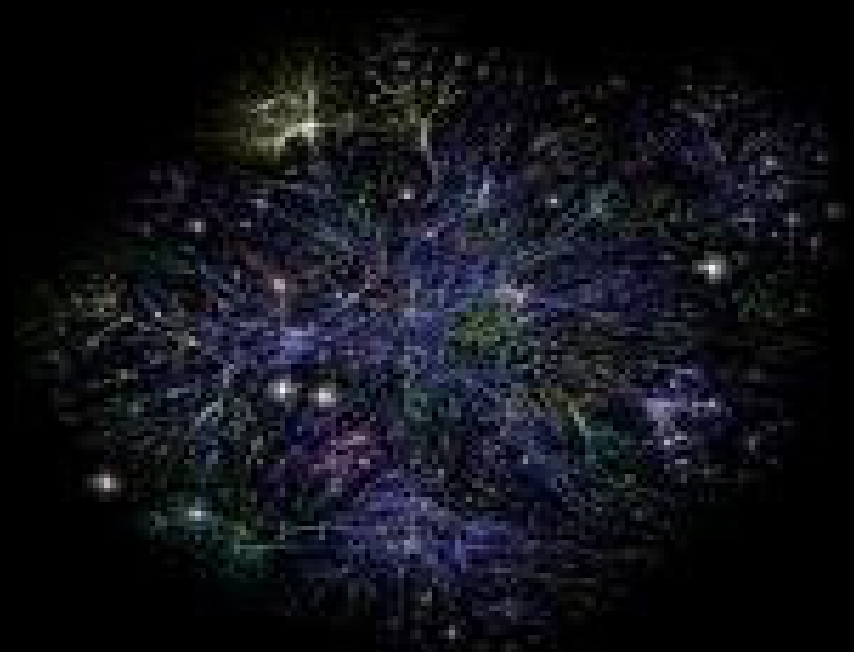
Intellectual Property Manager

www.bl.uk/ip

British Library







A New Copyright Policy Paradigm?

Public Interest

Public interest policy formation must consider the impact on the creator, the citizen, the economy, the education system and our culture – for today, and for future generations to come.

Balance

Creativity, innovation and a democratic civil society requires copyright law to strike a balance between the private interest of the creator being recognised and remunerated for their work, and the interest of the citizen in ensuring access to information and ideas.

Digital is Not Different

Copyright law should enshrine the principles of creativity, access, recognition and remuneration as it always has done. Exceptions should apply to all formats including digital formats.

Law Aligned with Realities

Rationalisation and simplification of the law will lead to understanding and respect for copyright.

Technology Neutral

Copyright law must be informed by technological advances, but specific technologies should not be enshrined in law.

<http://www.bl.uk/ip/pdf/digitalexceptions.pdf>

Technology and Reasonable User Expectations well ahead of Copyright Law

- Fair Dealing

Currently Fair Dealing only covers literary, dramatic, artistic, and musical works. Would you support the extension of Fair Dealing to cover sound recordings, film, and broadcast?

Yes, I would support	81.30%
No, I would not support	8.10%
Don't know	10.60%

British Library Copyright Questionnaire

‘Recordings, film, and broadcast materials, are all extremely important in much of today's research. You cannot adequately research music, films etc. without having copies to work on.’

‘When doing research you don't always know what material you are going to need – so being able to keep bits of data in its original form without having to transcribe everything would save time.’

‘Recently I needed a film as I was researching a building that featured in it, it proved difficult to access it. Making fair copies of films for educational purposes would be a great advantage!’

‘If you can copy part of a book for research purposes it would seem logical that an extract of a sound recording or film could be treated equivalently’

‘Recorded lectures and talks are likely to be increasingly available in digital form, and may be the only record of them. It should be possible to use these in the same way as a published paper at a conference.’

**Copyright law is being replaced by
Contract Law**

British Library Analysis of 100 Contracts

	Yes	No	Silent	9
Archiving	23	18	58	
Fair Dealing	58	42		
Visually Impaired	2		98	
Interlibrary Loan	2		98	
Exceptions	25		75	

Digital Preservation

“On termination of this Agreement the Institution will destroy and will procure that all Authorised Users destroy all content supplied through the Service stored on any digital information storage media, including but not limited to system servers, hard disks, diskettes and back up tapes.”

“On termination of this Agreement, the Licensee agrees to destroy, and will use its reasonable endeavours to procure that all Authorized Users destroy, all Licensed Material stored on any digital information storage media, including, but not limited to, system servers, hard disk, diskettes, and back up tapes.”

Fair Dealing Copying?

“You may not copy the Products in any form.”

“The Licensee may “ make such *temporary* local electronic copies by means of cacheing or mirrored storage of all or part of the Licensed Materials as are necessary solely to ensure efficient use by Library Staff and Patrons.”

“Users may browse, copy or print reports, but the download facility will not be available.”

But CDPA allows digital copying:

S.17 (2) Copying in relation to a literary, dramatic, musical or artistic work means reproducing the work in any material form. This includes storing the work in any medium by electronic means.

Duration of Copyright on the web - Google Book Project

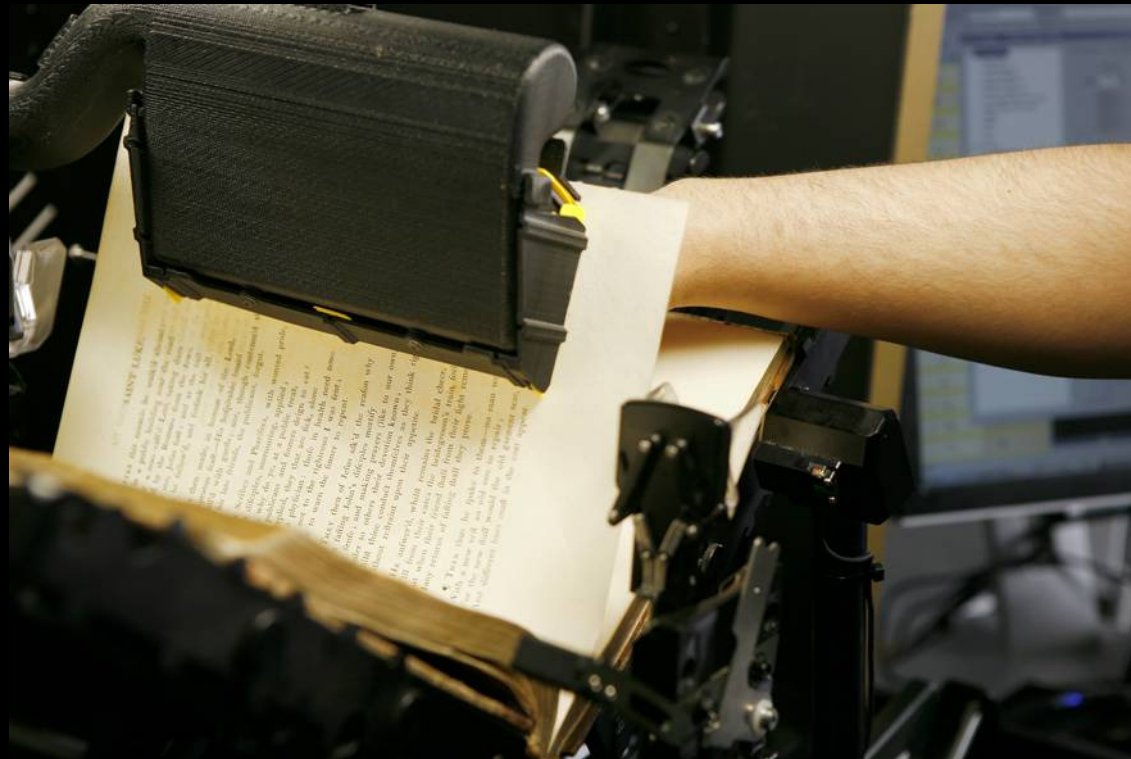
- Pre 1923 material available for view in the US.
- Post 1870 material blocked from view in the EU.



Preservation Exceptions

- Only a single copy can be made for preservation purposes currently under the law.
- Clearly not fit for purpose in the analogue world, let alone the digital world.
- Currently in UK law preservation copies of sound, film, (artistic work) or broadcast cannot be made.

Mass Digitisation



Mass Digitisation and Rights Clearance

A cultural organisation in digitising “special collections” NOT material commercially available.

Such material generally has no / small levels of residual commercial value but high levels of academic interest.

Therefore rights clearance is complex as:

1. Historical;
2. As little / no commercial value the rights holders are often not easily identifiable / represented.

Orphan Works

i2010

Memorandum of Understanding on Orphan Works

No legal certainty ... Libraries require legal certainty through legislation.

St Mary Le Bow Dialogues

150 hours spent by a freelancer

152 hours spent by BL staff

Circa 600 rights holders identified

Circa 90 contacted

13 yes responses

No rejections

ICA Talks – Institute of Contemporary Art

1,190 Hours of unpublished debates at the ICA recorded in the 1980s.

e.g. Derek Jarman, Salman Rushdie, Primo Levi *and lots of people you have never heard of!*

218 work days spent on tracking rights holders, writing to them etc.

1,650 rightsholders. 1000 identified. 950 written to.

Responses: 350 yes's; 5 no's; 1 fee request.

Historical Cut-off Points

and

Exceptions

and

A copyright system that
differentiates commercial

and

research use better.

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